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SENSITIVE

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SUBJECT: SLOVAK JUSTICE IS SUFFERING UNDER JUSTICE MINISTER
HARABIN

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BRATISLAVA 580 D) 08 BRATISLAVA 582

Classified By: Charge d'Affaires, a.i., Keith Eddins, for reasons 1.4 b
and d

1.(SBU) Summary: Justice Minister Harabin is attempting to alter the Slovak judicial and prosecutorial system in deeply troubling ways; after less than three years in office, his leadership has already had deleterious results. Although it is Harabin's offensive language and bold public lies (refs a, b) that attract media and public attention, it is his quieter efforts to undue a series of reforms in criminal and civil law that are most problematic. Many of these initiatives appear to be motivated by a desire to punish those who have crossed Harabin, to weaken prosecutorial instruments (ref d) and bodies, and to ensure that the levers of justice are in the hands of Harabin's cronies.

¶2. (SBU) Although several of Harabin's friends in the judiciary have been censured in the past for corrupt or inept practices, they now occupy key positions, e.g., as heads of disciplinary bodies, presidents of regional courts, or in high-ranking positions at the Justice Ministry. A prominent judge who led the judicial reform movement that began in the wake of Vladimir Meciar's defeat in 1998 described the atmosphere within the judiciary under Harabin as fearful, anxious and resigned. According to him and others in the legal arena, the damage that Harabin is doing is grave and will take many years to undo. The external factors that prompted earlier reforms, e.g., the EU accession process, are gone. Post will work with like-minded embassies and reach} Contacts in the legal community have told us that only one member of the Council (the widow of a former General Prosecutor) is willing to stand up to Harabin.

¶5. (U) When opposition parties attempted in September to a condemnation of former Justice Minister Lipsic (for allegedly trying to discredit the Justice Minister and create tension and disunity on the judiciary); exceeded its mandate in criticizing the one judge who publicly called for Harabin's resignation, setting in motion likely disciplinary action against her; pressured the General Prosecutor (an independent figure) to clarify the source of leaked information about Harabin (transcripts of phone conversations between Harabin and the alleged trafficker), adding that if the GP did not provide the information within a certain time, the Council would ask "PM Fico, as his supervisor, to warn him about this."

¶6. (C) The latest example of alleged improper political influence in the Judicial Council that has come to our attention involves the wife of the recently dismissed head of the Telecommunications Office (ref d). According to Macaj, senior GOS officials told him that she would be given a judgeship if he complied with their requests to withdraw a large public tender for HDTV services. He refused, and hers was reputedly the only nomination not approved by the Judicial Council. Macaj asserts that the order to blackball Macajova came directly from Harabin. These are just a few examples of a good idea that has evolved in a highly negative way under Harabin.

Punishing "Enemies" and ...

¶7. (SBU) Another notable feature of the current judiciary is the extent to which a pattern of retribution against critics or foes of Harabin is discernible. Again, the Judicial Council and the "disciplinary senates" it appoints appear to play a supporting role in marginalizing those who have crossed Harabin or his friends. For example, Minister Harabin initiated disciplinary action against the well-regarded former head of the Bratislava Regional Court, Darina Kuchtova, because of her sworn testimony regarding another judge (a friend of Harabin's) in a defamation trial in 2001.

¶8. (U) The judge who initiated the defamation trial against two journalists, Pavol Polka, was the head of the Zilina district court at the time. The journalists had reported on the findings of an audit committee, led by Kuchtova, that identified a number of ethical and procedural problems in Polka's court. Following Kuchtova's testimony at the defamation trial, Polka attempted unsuccessfully to bring charges against her for "damaging the position of a judge." He finally found a sympathetic ear in Harabin, who initiated the disciplinary proceedings against Kuchtova (on the above grounds) in late 2008.

¶9. (U) We have attended two disciplinary hearings against Kuchtova. A December 3 hearing was brief because Judge Polka failed to appear. This was the second hearing at which Polka -- the only witness whom the Justice Ministry's lawyer expressed interest in hearing from -- was a no-show. No decisions were taken at the hearing. In the third session on January 12, Polka showed up, as did three witnesses called by Kuchtova's lawyer, including former Justice Minister Jan Carnogursky. He and Kuchtova's other two witnesses, fellow participants in the audit committee, backed her account.

¶10. (SBU) Once again, no decisions were taken. The Justice Ministry's lawyer demanded that the Senate reconvene in February to hear the statement of one witness (for the defendant) who had not been present. The proceedings took on a surreal air. The conduct of the chief judge struck us as biased (against Kuchtova), if not incompetent. In the first hearing he tacitly defended Polka's last-minute no show, and, in the second session let Polka go on at length about issues only tangentially related to the charge. Although Slovak courts have had audio recording capabilities for several years, the sessions weren't recorded. Instead, a stenographer transcribed only the chief judge's somewhat sterilized recapitulation of the parties' statements.

¶11. (SBU) A Slovak judge who also attended the hearings expressed puzzlement that they were conducted according to rules of procedure for a criminal trial. We were subsequently told by the head of the Justice Ministry's Chief of the Criminal Section that because there are no detailed guidelines for the conduct of disciplinary senates, judges had decided to use "civil" procedures if the judge being investigated was a civil judge and "criminal" procedures if the judge under scrutiny was a criminal judge. That this farcical and time-consuming process will drag on for yet

another month seems to be part of a concerted effort to prolong the cloud over the accused and to erode interest and attention to her case, which has attracted media attention. The process also sends a clear message to other judges: don't cross Harabin or his friends.

¶12. (U) Other Harabin critics, among them prominent reform judges Peter Hrnciar, Jana Dubovcova, Alexander Mojs and Special Court Judge Jan Hrubala also have found themselves

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under fire by the Ministry and the Judicial Council. Although the alleged transgressions (most of which are minor and some of which appear to be fabricated) vary, a common thread among the individuals is that they advocate practices or institutions which Harabin dislikes. In several cases in which a disciplinary senate has absolved a judge out of favor with Harabin, e.g., in the cases of Hrubala and Mojs, the Minister has appealed the ruling. On the other hand, others, such as Judge Vladimir Kvetko, are treated with kid-gloves. Kvetko was involved in two vehicular accidents while under the influence of alcohol; the first accident resulted in serious injuries to the other driver. However, the Judicial Council, which should have ruled in November 2008 on the recommendation of the judicial senate to fire Kvetko, neglected to address the case. The result is that Kvetko is back on the bench.

...Attacking Institutions

¶13. (U) In some cases, Harabin's dislikes for institutions and individuals coincide, as in the case of Judge Ondrej Samas. Sources in the General Prosecutor's office have told us that Samas, another "reform" judge, has clashed with Minister Harabin in the past. He also leads the military courts, an institution Harabin is trying to abolish. Harabin argues that the military courts don't "do enough," and that their functions could easily be redistributed among the regular court system, echoing precisely Harabin's rationale for closing the Special Court. Whether Slovakia should maintain such military courts may be a legitimate question, but his moves to close these courts are widely seen as an effort to pave the way for the demise of the Special Court.

¶14. (U) Harabin's tactics in both cases are similar: he has rejected proposals to broaden the mandate of the Special Court and, at the same time, accused it of low productivity. In the case of the military courts, he succeeded in taking away their mandate to adjudicate crimes committed by police officers. In a stroke, Harabin cut the courts' case load and ended what had been an effective means of dealing with police malfeasance. As several prosecutors have told us, the fact that the military courts are separate from the regular court system renders them a more independent and effective force in dealing with police corruption or crime. Now, police will be prosecuted in local courts, where personal connections loom larger.

Harabin's Free Reign Takes A Toll

¶15. (U) It's not only the Judicial Council that appears to be unduly open to influence by political forces; it is the courts, too. Several recent cases with which we are familiar raise concerns about possible corruption. For example, the year-long struggle of the Mayor of Pezinok and civic activists to prevent the construction of a waste dump 400 meters from the town center was dealt a body blow when the Bratislava Regional Court rejected a solidly grounded case against the construction with what was, according to several lawyers, shaky legal argumentation. The judge also repeatedly accused the civic activists of "misleading the public." The town and the civic activists are appealing to

the Supreme Court, but they are not optimistic. Another recent case that has raised eyebrows is the Bratislava Regional Court's January 8 decision to release on bail Michal Hrbacek, a former STB agent who is suspected of involvement of the kidnapping of former President Kovac's son and of numerous other serious crimes.

¶16. (SBU) It has been widely speculated that Minister Harabin will resign his post this year to become head of the Supreme Court. Coincidentally, the previous Supreme Court Chief's bid to renew his position last fall was stymied by none other than Harabin (and the Judicial Council). When then-Supreme Court Chief Milan Karabin declared his candidacy for another term, the Judicial Council announced that it could not vote until the Supreme Audit Office (NKU) had completed an investigation of the Supreme Court's 2007 financial report. Although the annual report to Parliament (submitted under Karabin's auspices) was not questioned at the time, Justice Minister Harabin in late 2008 requested an NKU review, citing alleged irregularities. Knowledgeable sources from the

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Justice Ministry tell us that the charges against Karabin are trumped up, and that they fully expect Harabin to declare his interest in the Supreme Court position by summer.

¶17. (C) One thing is clear: as long as Vladimir Meciar is in government, Harabin will occupy a key place in the Slovak judiciary. Harabin, to put it simply, is Meciar's protection from prosecution: whether in the case of the Michal Kovac Jr. kidnapping, the murder of alleged kidnapping participant Robert Remias, or for his ill-gotten wealth. Perhaps to help preserve Meciar and other patrons, Harabin seems determined to weaken the ability of the Slovak judicial and prosecutorial arms to operate independently and effectively.

¶18. (SBU) During recent parliamentary consideration of a technical update to the law on prosecution, several Smer MPs confirmed to the press that Justice Minister Harabin had approached them with a request to amend the law so as to remove the requirement for the General Prosecutor to have prosecutorial experience. According to Smer MP Mojmir Mamojka, Chairman of the Constitutional and Legal Committee, he refused the request and told Harabin that such a substantive proposal must first be discussed within the coalition. When journalists asked Harabin about the incident, he replied that "your information is not correct." The response of General Prosecutor Trnka, with whom Harabin has recently wrangled (ref c), was acerbic: "It's nonsense. I don't understand it; in the future even a chimney sweep could be General Prosecutor." Trnka is in Harabin's crosshairs because he confirmed the authenticity of transcripts of phone calls between Harabin and suspected drug trafficker Baki Sadiki (ref a and b).

¶19. (SBU) In addition to his sustained efforts to get rid of the Special and Military Courts, Harabin has succeeded in strengthening his control over the regular courts. Thanks to new legislation, the Minister may now recall a regional president for any reason. The court president, in turn, have more discretion over individual judges and judges' councils, who can neither suggest that a regional president be recalled, nor initiate a disciplinary procedure against a court president. We also expect Harabin's proposed amendments to the criminal code, which would (per ref c) significantly weaken prosecutorial tools and also lessen penalties for repeat offenders of serious crimes, will resurface this year.

Growing Concern and What We Can Do

¶20. (SBU) While few NGOs focus on judiciary and rule of law in Slovakia, there is a growing recognition among civil society, as well as on the part of politicians, business

people and journalists, that the state of the judiciary is becoming one of Slovakia's biggest internal problems. Public confidence in the judiciary is at an all-time low and the percentage of Slovaks who perceive corruption as growing problem has increased without respect to party affiliation. Economic think-tanks cite shortcomings in the judiciary as an important factor in what they describe as a worsening business climate. In addition to a lack of political will to combat these negative trends, there is a lack of capacity among Slovak civil society to fund and staff judicially-focused NGOs.

21.(SBU) Based on our discussions with judges, Justice Ministry officials, MPs and interested think tanks, we have begun to compile a "wish list" of potential training or NGO projects which might be able to address some of the problems.

Fully cognizant of the lack of funding available from INL or Opdat for rule of law training in Slovakia, we are reaching out to INL, UNODC (UNVIE), and ABA CEELI in Prague to discuss opportunities for leveraging corruption-related speakers and events in the region and will continue to devote scarce PAS resources to support organizations like Transparency International. In January, we initiated an interagency law enforcement working group to exchange information and ideas on how to tackle challenges such as backsliding in the rule of law. (Note: when Ambassador Ossitnik raised concerns about corruption with Prime Minister Fico during his farewell call, Fico stated that it would be very helpful if ABA CEELI could again conduct some training or projects here.) We also will coordinate with like-minded EU Embassies and the local business community as part of a broader Mission

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counter-corruption strategy -- which we will share with Washington agencies -- to explore avenues for preserving and protecting judicial reform.

¶22. (SBU) A useful first step could be for an respected international or European organization to perform an assessment of the Slovak judicial sector. The findings of such an assessment would help shape an effective response and serve as a catalyst for debate and a tool for increasing public awareness of the problems. We will explore with EU and NGO partners the feasibility of such a study, and welcome reactions from USG rule of law experts as to the utility of such a project. As the former (and first) head of the Slovak Judges' Association told us, it is not only a question of progress that has been halted; the damage that Harabin and his supporters are doing will be felt in Slovakia for years to come. Unfortunately, we agree.

EDDINS